

(2) *Payee statement.* The term “payee statement” means any statement required to be furnished under—

(i) Section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities, generally a Schedule K-1 (Form 1065) for section 6031(b) or (c), a copy of the Schedule K-1 (Form 1041) for section 6034A, and a copy of Schedule K-1 (Form 1120S) for section 6037(b)),

(ii) Section 6039(a) (relating to information required in connection with certain options),

(iii) Section 6041(d) (relating to information at source, generally the recipient copy of Form 1099-MISC, Form W-2, Form 1099-INT, and the winner's copies of Form W-2G),

(iv) Section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales, generally the recipient copy of Form 1099-MISC),

(v) Section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits, generally the recipient copy of Form 1099-DIV),

(vi) Section 6044(e) (relating to returns regarding payments of patronage dividends, generally the recipient copy of Form 1099-PATR),

(vii) Section 6045(b) or (d) (relating to returns of brokers, generally the recipient copy of Form 1099-B for broker transactions, the transferor copy of Form 1099-S for reporting proceeds from real estate transactions, and the recipient copy of Form 1099-MISC for certain substitute payments),

(viii) Section 6049(c) (relating to returns regarding payments of interest, generally the recipient copy of Form 1099-INT),

(ix) Section 6050A(b) (relating to reporting requirements of certain fishing boat operators, generally the recipient copy of Form 1099-MISC),

(x) Section 6050H(d) (relating to returns relating to mortgage interest received in trade or business from individuals, generally the payor copy of Form 1098),

(xi) Section 6050I(e) (relating to returns relating to cash received in trade or business, generally a copy of Form 8300),

(xii) Section 6050J(e) (relating to returns relating to foreclosures and abandonments of security, generally the borrower copy of Form 1099-A),

(xiii) Section 6050K(b) (relating to returns relating to exchanges of certain partnership interests, generally a copy of Form 8308),

(xiv) Section 6050L(c) (relating to returns relating to certain dispositions of donated property, generally a copy of Form 8282),

(xv) Section 6050N(b) (relating to returns regarding payments of royalties, generally the recipient copy of Form 1099-MISC),

(xvi) Section 6051 (relating to receipts for employees, generally the employee copy of Form W-2),

(xvii) Section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance, generally the employee copy of Form W-2),

(xviii) (Section 6053(b) or (c) (relating to reports of tips, generally the employee copy of Form W-2), and

(xix) Section 4093(c)(4)(B) (relating to certain purchasers of diesel and aviation fuels).

(3) *Other items.* The term “payee statement” also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax is required to be deducted and withheld under chapter 3 of the Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Code or any treaty obligation of the United States), generally the recipient copy of Form 1042S.

[T.D. 8386, 56 FR 67182, Dec. 30, 1991]

§ 301.6723-1 Failure to comply with other information reporting requirements.

(a) *Imposition of penalty.*—(1) *General rule.* A penalty of \$50 is imposed for each failure to comply timely with a specified information reporting requirement (as defined in paragraph (a)(4) of this section) or for each failure to include correct specified information. Multiple penalties are imposed with respect to a document with failures to comply with more than one of the requirements set forth in paragraph (a)(4) of this section or multiple

instances of failures to comply with any one of these requirements. Nonetheless, if a failure that occurs with respect to any requirement defined in paragraph (a)(4) of this section would be subject to a penalty under both paragraph (a)(2)(i) and paragraph (a)(2)(ii) of this section, no more than one penalty is imposed for such failure. The total amount imposed on any person for all failures during any calendar year with respect to all specified information reporting requirements shall not exceed \$100,000. See paragraph (a) of § 301.6724-1 for the waiver of the penalty for a failure that is due to reasonable cause.

(2) *Failures subject to the penalty.* The failures to which paragraph (a)(1) of this section apply are—

(i) A failure to comply timely with a specified information reporting requirement on or before the date prescribed therefor (“failure to comply timely”), and

(ii) A failure to include all the information required by a specified information reporting requirement or the inclusion of incorrect information (“failure to include correct information”).

(3) *Exception for inconsequential errors or omissions.* An inconsequential error or omission is not considered a failure to comply with a specified information reporting requirement. For purposes of paragraph (a)(3) of this section, an error or omission is considered inconsequential if it does not frustrate the purpose or use for which the information is intended.

(4) *Specified information reporting requirement defined.* For purposes of section 6723 and this section, a “specified information reporting requirement” means—

(i) The requirement to provide the notice under section 6050K(c)(1) (relating to the requirement that a transferor notify the partnership of an exchange of a partnership interest);

(ii) Any requirement contained in the regulations under section 6109 that a person—

(A) Include his or her taxpayer identification number (“TIN”) on any return, statement, or other document (other than an information return or payee statement),

(B) Include on any return, statement, or other document (other than an information return or payee statement) made with respect to another person the TIN of such person, or

(C) Furnish his or her TIN to another person;

(iii) Any requirement contained in the regulations under section 215 that a person—

(A) Furnish his or her TIN to another person, or

(B) Include on his or her return the TIN of another person; and

(iv) The requirement under section 6109(e) that a person include the TIN of any dependent on his or her return.

(b) *Examples.* The provisions of paragraph (a) of this section may be illustrated by the following examples which do not take into account the reasonable cause waiver under section 6724(a) and paragraph (a)(1) of § 301.6724-1.

Example 1. Individual A, who has two dependents ages 7 and 9, files his 1990 Form 1040 in 1991. The Form 1040 requires him to provide the TINs of his two dependents, which A fails to do. Because A fails to comply timely with two requirements to include on his return the TIN of another person, a \$50 penalty under paragraph (a) of this section is imposed on A for each of the two failures, for a total penalty of \$100.

Example 2. In 1991 Individual B opens with Bank X an account which pays reportable interest under section 6049. When B opens the account, Bank X requests that B provide his TIN on a Form W-9. B does not provide his TIN as required by § 301.6109-1(b). As a result B fails to comply timely with a specified information reporting requirement under paragraph (a) of this section for furnishing his TIN to another person. Therefore, a \$50 penalty is imposed on B under paragraph (a) of this section for the failure. See section 6721(a) for the penalty to which X may be subject if X files a Form 1099-INT (relating to payments of interest) for calendar year 1991 without B's TIN. See section 3406(a)(1)(A) which requires X to impose backup withholding on reportable payments of interest to B's account.

Example 3. In 1991 Individual C is a non-resident alien with an account inside the U.S. with Bank Z. The account pays interest that would be reportable under section 6049 but for the fact that it is paid to a non-resident alien. Under section 6109 and § 301.6109-1(b), Bank Z is required to request the TIN from C. C claims that he is a non-resident alien and that his account is not subject to information reporting under section 6049. Because of this, C contends he is

not required to provide any TIN information. As a result of this discussion, Bank Z then requests C to provide it with a Form W-8 in order for C to certify that he is a nonresident alien which C fails to do. C fails to comply timely with a specified information reporting requirement under paragraph (a) of this section to furnish his TIN to another person. Therefore, a penalty is imposed on C under paragraph (a) of this section for the failure. See section 6721(a) for the penalty that may be imposed on Z if Z files a Form 1099-INT for calendar year 1991 without C's TIN. See section 3406(a)(1)(A) under which Z is required to impose backup withholding on reportable payment of interest to C's account.

Example 4. In 1991 Partnership D opens with Bank Y an account that pays reportable interest under section 6049. When D opens the account, Y requests the partnership's employer identification number (EIN) on a Form W-9 as required under § 301.6109-1(b). The partnership provides its EIN on the Form W-9. Y files an information return with respect to D for the 1991 calendar year. Subsequently, the Internal Revenue Service later notifies Y that D's EIN is incorrect as defined under section 3406 and § 35a.3406-1(a)(6). D fails to comply timely with a specified reporting requirement under paragraph (a) of this section of furnishing its correct EIN to another person. Therefore, a penalty is imposed on D under paragraph (a) of this section for the failure. See section 6721(a) for the penalty to which Y may be subject if Y files a Form 1099-INT for calendar year 1991 without D's correct EIN. See section 3406(a)(1)(B), which requires Y to impose backup withholding on reportable payments of interest to B's account when the Internal Revenue Service or a broker has notified Y that the EIN is incorrect.

[T.D. 8386, 56 FR 67182, Dec. 30, 1991]

§ 301.6724-1 Reasonable cause.

(a) *Waiver of the penalty*—(1) *General rule.* The penalty for a failure relating to an information reporting requirement (as defined in paragraph (j) of this section) is waived if the failure is due to reasonable cause and is not due to willful neglect.

(2) *Reasonable cause defined.* The penalty is waived for reasonable cause only if the filer establishes that either—

(i) There are significant mitigating factors with respect to the failure, as described in paragraph (b) of this section; or

(ii) The failure arose from events beyond the filer's control ("impedi-

ment"), as described in paragraph (c) of this section.

Moreover, the filer must establish that the filer acted in a responsible manner, as described in paragraph (d) of this section, both before and after the failure occurred. Thus, if the filer establishes that there are significant mitigating factors for a failure but is unable to establish that the filer acted in a responsible manner, the mitigating factors will not be sufficient to obtain a waiver of the penalty. Similarly, if the filer establishes that a failure arose from an impediment but is unable to establish that the filer acted in a responsible manner, the impediment will not be sufficient to obtain a waiver of the penalty. See paragraph (g) of this section for the reasonable cause safe harbor for persons who exercise due diligence.

(b) *Significant mitigating factors.* In order to establish reasonable cause under this paragraph (b), the filer must satisfy paragraph (d) of this section and must show that there are significant mitigating factors for the failure. The mitigating factors include, but are not limited to—

(1) The fact that prior to the failure the filer was never required to file the particular type of return or furnish the particular type of statement with respect to which the failure occurred, or

(2) The fact that the filer has an established history of complying with the information reporting requirement with respect to which the failure occurred. In determining whether the filer has such an established history, significant consideration is given to—

(i) Whether the filer has incurred any penalty under §§ 301.6721-1, 301.6722-1, or 301.6723-1 in prior years for the failure (or under parallel provisions of prior law), and

(ii) If the filer has incurred any such penalty in prior years, the extent of the filer's success in lessening its error rate from year to year.

A filer may treat as a penalty not incurred any penalty under sections 6721 through 6723 that was self-assessed under section 6724(c)(3) and any penalty under section 6676(b) that was self-assessed under section 6676(d), prior to amendment or repeal by the Omnibus Budget Reconciliation Act of 1989. See